IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

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(1) S.B. Sales Tax Revision Petition No. 74/2002

M/s. Shree Metallic Yarn Industries, Ajmer
Versus
The Commercial Taxes Officer, Ajmer

(2) S.B. Sales Tax Revision Petition No. 75/2002

M/s. Shree Metallic Yarn Industries, Ajmer
Versus
The Assistant Commissioner, Circle-A,
Commercial Taxes Deptt., Ajmer

(3) S.B. Sales Tax Revision Petition No. 76/2002

M/s. Shree Metallic Yarn Industries, Ajmer
Versus
The Commercial Taxes Officer, Ajmer

(4) S.B. Sales Tax Revision Petition No. 77/2002

M/s. Shree Metallic Yarn Industries, Ajmer
Versus
The Commercial Taxes Officer, Ajmer

(5) S.B. Sales Tax Revision Petition No. 78/2002

M/s. Shree Metallic Yarn Industries, Ajmer

Versus
The Assistant Commissioner, Circle-A,
Commercial Taxes Deptt., Ajmer

(6) S.B. Sales Tax Revision Petition No. 79/2002

M/s. Shree Metallic Yarn Industries, Ajmer
Versus
The Commercial Taxes Officer, Ajmer

(7) S.B. Sales Tax Revision Petition No. 80/2002

M/s. Shree Metallic Yarn Industries, Ajmer
Versus
The Assistant Commissioner, Circle-A,
Commercial Taxes Deptt., Ajmer

(8) S.B. Sales Tax Revision Petition No. 81/2002

M/s. Shree Metallic Yarn Industries, Ajmer
Versus
The Assistant Commissioner, Circle-A,
Commercial Taxes Deptt., Ajmer

(9) S.B. Sales Tax Revision Petition No. 91/2002

M/s. Shree Metallic Yarn Industries, Ajmer
Versus
The Commercial Taxes Officer, Ajmer
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Date of order :: August 8, 2007

REPORTABLE

PRESENT

HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. Resham Bhargava for the petitioner-assessee
Mr. Kapil Mathur on behalf of Mr. R.B. Mathur for the respondent-Revenue

BY THE COURT:

1. These revision petitions of the assessee filed against the order of Tax Board dated 16.07.2001 raise a short, but interesting question of law for consideration by this court.

2. The question is as to whether the metallic yarn produced and sold by the assessee during the period in question, namely 1986-87 to 1988-89, is taxable at the rate of 1.5% as "all kinds of man-made yarn whether synthetic or non-synthetic, cellulosic or non-cellulosic, blended or not and waste thereof", or is taxable at the rate of 3% as 'Badla' under notification dated 19.06.1967 (S.No. 130 of J.K. Jain's Book Vol.2). The said commodity 'Badla', though not defined term, is used in the notification dated 19.06.1967 alongwith other items like Gota, Gota-Kinari, Salma and Sitara. The said notification is reproduced hereunder:-

"S.No. 130 : F.5(56)FDCT/67-2 dated 19.6.1967

> *In exercise of the powers conferred by S.8(5), CST Act, 1956, the State Govt. [.2.] hereby directs that the rate of tax payable under clause (b) of sub-section (2) of the said section by a dealer having his place of business in the State in respect of the sale by him from any such place of business of* ***Gota, Gota-Kinari, Salma, Sitara and Badla*** *in the course of inter-State trade or commerce shall be calculated at the rate of three per cent. This shall have immediate effect."*

Later on, these items were exempted from sales tax vide notification dated 06.03.1991 (S.No. 836 of J.K. Jain's Book Vol.2). The assessing authority while passing the original assessment order did not impose any additional tax over 1.5%, which was charged by the assessee from his customers and paid to the State. However, by resort to Section 12 of the RST Act, 1954 (for short, 'the Act'), exercising its reassessment powers, the assessing authority imposed tax on sale of the aforesaid commodity metallic yarn at the rate of 3% and the difference tax was imposed. The first appeal filed by the assessee was allowed by the learned Deputy Commissioner (Appeals) vide order dated 30.11.1994. The second appeal filed by Revenue before the Tax Board came to be allowed by the Tax Board by the impugned order dated 16.07.2001 and it

was held by the Tax Board that the metallic yarn produced and sold by the assessee was taxable at the rate of 3% as 'Badla' during the relevant period and not as 'man-made yarn'.

3. Hence, these revision petitions at the instance of the assessee before this court.

4. Heard learned counsel on both the sides and perused the record.

5. To understand what is metallic yearn, a reference to relevant extract from **Encyclopedia Britannica (Vol.7 - 15th Edition) page 269** may be pertinent here.

> *"Modern metallic filaments are made by sandwiching a thin layer of metal, usually aluminum, between thin sheets of the appropriate types of plastic film. The lamination may by carried out in several ways. In the production of the acetate butyrate aluminum-foil metallic fibre, for example, a thermoplastic adhesive, either coloured or clear, is applied to both sides of a sheet of aluminum 0.00045-inch (0.01 millimetre) in thickness. The coated foil is then heated to about 90' C (200' F) and passed through a set of rollers, together with two sheets*

of cellulose acetate butyrate, in such a way that the aluminum foil becomes the centre of the "sandwich". The laminated material is then slit into narrow ribbonlike filaments of the desired width; e.g. 1/8 to 1/128 inch (3.2 to 0.20 millimetres).

In some types of metallic filament, the centre of the sandwich consists of a plastic (e.g. Polyster) film that has been vacuum-coated with aluminum, and this may then be protected by the application of layers of lacquer or plastic film as above.

Many types of coloured metallic filament are produced, including those with the metallic glitter of the aluminum shining through the coloured adhesive and those having coloured outer plastic films. Gold-coloured filaments are made by using an orange-yellow dyestuff or pigment in the adhesive; a silver colour requires only the natural glitter of the aluminum.

Metallic MC yarns are used almost entirely as decorative materials for the textile industry. The aluminum foil that provides the glitter in a modern metallic yarn is protected from any ambient corrosive materials by the plastic film in which it is enclosed. Polyester types will withstand repeated launderings without losing sparkle. Because metallic yarns are not affected by seawater or the chlorinated water of swimming pools, they are widely used in swimwear. The dyestuffs used in colouring metallic fibres are usually fast to light thus retaining bright colour.

Because metallic MC yarns are used primarily for decorative purposes, they do not

usually contribute significantly to the strength of fabrics or garments. They may, however, be used as weft or warp yarns, and are sufficiently strong to withstand weaving and knitting operations. When necessary, metallic yarns are combined with such supporting yarns as nylon. The plastic film of the metallic yarn is flexible, and the yarns are extensible to a degree depending upon the type."

6. An extract from the the commentary of **"Essentials of Textiles" by Marjory L. Josehp, California State University, Northridge (Second Edition)** is also of relevance here :-

"METALLIC FIBERS OR YARNS

Metallic yarns are truly the oldest form of man-made fiber, dating back to ancient Persia and Assyria. Actually, the first metallic fibers were not real fibers but were the result of slitting very thin sheets of metal into narrow, ribbonlike forms. Even today most metallic yarns are manufactured by variations of this old process.

The Textile Fiber Products Identification Act defines metallic fiber as

> a manufactured fiber composed of metal, plastic-coated metal, metal-coated plastic, or a core completely covered by metal.

Gold, silver, and aluminum are the metals most

often used in textile products. Gold and silver yarns are extremely costly. Occasionally, they are pure metal, but because these metals are soft, it is more common for thin strips of the product to be wrapped around a central core of a strong, flexible product, generally silk or very fine copper wire. Silver tarnishes quickly in the air, and gold may discolor, so aluminum has replaced these fibers in Western countries. Some fabrics from the Orient are still made with pure gold or silver threads."

7. The Hon'ble Supreme Court in Superintendent of **Central Excise, Surat Vs. VacMet Corporation (P) Ltd.** reported in **AIR 1986 Supreme Court 1167** while dealing with a controversy relating to metallized yarn under Central Excise and Sal Act, 1944 held as under:-

"We have no doubt in our mind agreeing with the judgment and order passed by the Gujrat High Court that yarn (also known as metallized yarn) manufactured by the respondents in the form of silvery white or golden thin flat, narrow and continuous strip made of metallized polyester from metallized laminated plastic sheets or foils which are slitted by them by electrically operated machines fall within the purview of Tariff Entry 15A (2) of the First Schedule to the Central Excise and Salt Act, 1944 which is a specific entry relating to articles made of plastics of all kinds as contented by the respondents and therefore are dutiable at a lower rate and that the goods in

question do not come within the ambit of the general Tariff Entry 18 and were therefore not liable to higher rate of duty."

8. The Hon'ble Allahabad High Court in the case of **State Vs. Memorex Company** reported in **(1980) Tax L.R. NOC. 19 (ALL.)** held as under :-

"The commodity manufactured by the assessee viz. metallic yarn manufactured out of polyster films may be unspun fibre as it is used in weaving and is unspun but if it was not yarn it could not be filature or artificial silk yarn."

9. The Division Bench of the Hon'ble Gujrat High Court in the case of **Metta Embo Vs. State of Gujrat** reported in **(1993) 90 STC 505 (Guj.)** explained the process of producing metallic yarn as under :-

"The process of producing metallic yarn was witnessed by the Assistant Sales Tax Commissioner before deciding the appeal. He has noted that the metallic yarn is produced from a transparent glittering polyester film. Firstly, the film is put on rough slitting machine from which strips of a width of 64 mm. emerge. These strips are further placed on micro-slitting machine which cuts the strips into 214 pieces. These 214 pieces are known as metallic yarn. At that time both the sides of the strip are left out. These remaining strips are of uneven breadth

and they are called side strips. The Tribunal has further noted on the information furnished that polyester yarn which is used for weaving clothes is produced by three methods of which the basic raw material is the same. The side raw material is in pulp form and is known as D.M.T. Which is a petroleum product out of which all polyester is manufactured. From this, yarn is produced by using either of the three different processes, viz., (i) fibre process, (ii) continuous filament process and (iii) metallic filament process. In the present case, the relevant process is metallic filament process. As per this process, pulp is spread like a sheet which is called polyester filament. This filament is given aluminum vapour on both sides which gives it a glittering surface. After this, the film is put on rough slitting machine. Thereafter, the further process as noted by the Assistant Sales Tax Commissioner is followed. From the aforesaid process of manufacturing metallic yarn, it is clear that metallic yarn and side strips are produced out of the same substance which is known as polyester film. Firstly, the strips of width of 64 mm. from the polyester film are produced. Thereafter, the strips are placed on micro-slitting machine which cuts it into 214 pieces plus 2 side strips."

10. On the side opposite, learned counsel for the Revenue heavily relied upon the judgment of the Hon'ble Supreme Court in the case of **Commissioner of Sales Tax, U.P. Vs. M/s. Sarin Textiles Mills** reported in **(1975) 4 SCC 308 = (1975) 35 STC 634**, in which while dealing with a case of woollen carpet yarn

popularly known as 'Kati', the Hon'ble Supreme Court held as under :-

> *"14. Thus, a fibre in order to answer the description of "yarn" in the ordinary commercial sense, must have two characteristics. Firstly, it should be a spun strand. Secondly, such strand should be primarily meant for use in weaving, knitting or rope-making.*
>
> *20. Now, the facts found on the basis of evidence adduced by the Additional Appellate Commissioner and the Judge (Revisions) Sales Tax are that such woollen kati are short cutpieces of unspun fibre (each of which according to the aforesaid Encyclopaedia is about 2 inches in length). It has very little tensile strength and is not used – as it is not capable of being used – for weaving, knitting or rope-making. The only use to which the kati or pile is put is by attaching each piece by hand around two warp threads. The kati is not a component of the basic fabric or the carpet. It is not an integral constituent of the warp and weft of the carpet which consists of a different spun fibre of great tensile strength, i.e. of yarn. The process of looping or knotting these pile tufts is different and distinct from the process of lengthwise and crosswise combining of warp and weft components, which makes the woven basic structure of the carpet.*
>
> *21. In view of these primary facts found by the taxing authorities, the conclusion is inescapable, that woollen carpet kati is neither "yarn" nor "unspun fibre used in weaving" within the contemplation of the aforesaid notifications issued under Section 3-A."*

The aforesaid case, with great respects, is clearly distinguishable from the facts of the present case, where metallic yarn in full lengths by slitting of metal film prepared with coating of aluminum thin sheets with films which is purchased by the assessee and by slitting process, such yarn is obtained, cannot be equated with woollen Kati, which is a short length cut pieces of unspunned fiber of about 2 inches in length. The Hon'ble Supreme Court, therefore, held that it could not be either held as 'yarn' or as 'woollen goods'. The reliance placed by the Revenue on the said case is, therefore, misconceived. The other contention raised by the learned counsel for Revenue is that since in the registration application, the item stated to be manufactured by the petitioner assessee was 'Badla', therefore, the assessee could not contend that commodity manufactured by him was not 'Badla', but was 'man-made yarn' and he was estopped from raising such a contention. This contention of the learned counsel for the Revenue is also misconceived. There is no estoppel against the law and an assessee is entitled to contend

that a particular commodity manufactured or sold by him falls under a particular entry liable to tax at a particular rate. Therefore, merely because the assessee in its application for registration filed before commencement of manufacturing activity stated the goods to be manufactured by assessee was 'Badla' without reference to any particular notification and unaware of a specific entry in the relevant notifications relating to “man-made yarns” making it taxable only at 1.5%, the assessee cannot be said to be debarred from raising such a plea and contention. It is on the other hand when the assessing authority sought to invoke power of reassessment under Section 12 of the Act to impose additional tax treating the same as 'Badla' and impose tax at the rate of 3%, the burden of proof was upon the Revenue to establish that the commodity in question was covered by the term 'Badla' alone to the exclusion of any other entry which was claimed to be applicable by the assessee. No such burden has been discharged by the Revenue in the present case.

11. That even assuming for argument's sake that the commodity in question manufactured by the assessee could fall both under the definition of 'Badla' and in the category of “man-made yarn”, still the question of rate of tax has to be resolved in favour of the assessee because it is well-settled principle of interpretation that where two views are possible, one in favour of the subject or assessee has to be adopted. Therefore, the metallic yarn which falls within the definition of “man-made yarn” and is taxable at the rate of 1.5% under the relevant notifications can be said to be covered by the definition of 'Badla' also, still the rate of tax applicable to the assessee in the present case would be 1.5%, because 'Badla' itself can fall within the definition of “man-made yarn”.

12. The aforesaid quoted judgments and extracts from encyclopedia Britannica and book of Essence of Textiles and case laws clearly establish that the metallic yarn produced by the assessee squarely falls within the definition of man-made yarn and is therefore, taxable at the rate of 1.5% only under the

relevant notifications.

13. Consequently, these revision petitions are allowed and the order of the Tax Board dated 16.07.2001 is set aside and it is held that during the relevant period the assessee was liable to pay sales tax at the rate of 1.5% only on sale of metallic yarn as “man-made yarn” under the applicable rate notifications and not at 3% as 'Badla', under the notification dated 19.06.1967.

14. Revision petitions are allowed with no order as to costs.

(Dr.VINEET KOTHARI),J.

Pramod
Item No. 6 to 14